IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18166 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAGWANBHAI GOVINDBHAI AHER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 18166 of 2003

MR PS CHAMPANERI for Petitioner No. 1-4

Mr. KD Pandya, AGP for Respondent No. 1-4

NOTICE SERVED for Respondent No. 3-4

UNSERVED-EXPIRED (N) for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 28/07/2004

ORAL JUDGEMENT

Rule. Mr. KD Pandya, learned AGP waives service of Rule on behalf of the respondents. With the consent

of the parties, the matter is taken up for final hearing today.

2. In the present Special Civil Application, what is challenged is the judgment and order passed by the revisional authority, i.e. Secretary (Appeals), Revenue Department, State of Gujarat , Ahmedabad , dated 7.7.2003 in revision application No. 92/1999 in dismissing the same and confirming the order passed by the Collector, Junagadh dated 23rd July 1999 and also the order passed by the Assistant Collector, Porbandar dated 29.4.1995 by which the land in question has been confiscated and forfeited to the Government.

3. The dispute is with regard to the land bearing Survey No. 263 admeasuring 2 acres and 39 gunthas of land and Survey No. 264 admeasuring 3 acres and 12 gunthas of land situated at Village Nagichana, Taluka-Mangrol, District Porbandar. The aforesaid lands were in the name of Aher Hamir Arshi on the basis of the entry in the Khedut Pothi to the effect that the land in question is a old tenure land. The petitioners purchased the said land by registered sale deed for a consideration in the year 1986 and since 1986 the petitioners are in occupation and possession of the lands in question and/or cultivating the lands in question. As the Deputy Collector, Porbandar was of the opinion that the land in question is new tenure land and as there is a breach of condition he initiated proceedings for breach of condition and passed the order of confiscating and forfeiting the land to the Government vide order dated 29th April 1995. Being aggrieved and dissatisfied with the order passed by the Assistant Collector, Porbandar dated 29.4.1995 the petitioners preferred appeal before the Collector, Junagadh which was numbered as Appeal No. 14/1995. Before the Collector also it was the contention on behalf of the petitioners that the land in question is old tenure land and they have purchased the land in question on the basis of the entry in the Khedut Pothi and even without prejudice to their rights and contentions they have agreed that even if the land is to be treated as new tenure land then also they are ready and willing to pay necessary premium, penalty etc., and to get the transaction regularised. Still, the Collector, vide her judgment and order dated 23.7.1999 dismissed the said appeal. Being aggrieved and dissatisfied with the same, the petitioners preferred revision application before the State Government which was numbered as Revision Application No.92/1999. Before the revisional authority also it was submitted that they are ready and willing to treat the land in question as

new tenure land and to pay the necessary premium and penalty and to see that the transaction is regularised as there is no fault on the part of the petitioners who have purchased the land. The Secretary (Appeals), Revenue Department, State of Gujarat, vide his order dated 7.7.2003 dismissed the revision application confirming the order passed by both the authorities below.

4. Being aggrieved and dissatisfied with the aforesaid orders in confiscating the land in question and forfeiting the same to the Government, the petitioners have preferred this petition under Article 226/227 of the Constitution of India. This Court,[Coram: Mr. A.R. Dave, J.], while issuing notice on 12th January 2004 recorded submissions on behalf of the petitioners that without prejudice to the rights of the petitioners an application is already made for regularisation of the transaction as they are ready and willing to make the payment if the said transaction with regard to the sale is regularised and the respondent authorities were directed to state whether a final decision has been taken on the application submitted by the petitioners or not. Today, when the matter is called out, learned AGP, Mr. KD Pandya, submits that he has no instruction whether the application submitted by the petitioner for regularisation of the transaction is decided and disposed of or not. Be that as it may the fact remains that in the Khedut Pothi (Revenue Record) the entry was that it is a old tenure land. However, it is the submission on behalf of the respondents that the said entry is a forged one and as such from the very beginning the land in question is a new tenure land. The petitioners seems to be bonafide purchasers. They have purchased the land in question for a consideration by registered sale deed in the year 1986 on the basis of the entry in the Khedut Pothi to the effect that the land in question is a old tenure land. The fact that the petitioners are in occupation and possession of the land and they are cultivating the land since 1986 is not in dispute. It is also not in dispute that in the Khedut Pothi the entry was made to the effect that the land in question is a old tenure land. The mischief might have been committed by the original land owners but the petitioners have purchased the land in question by registered sale deed in the year 1986 for a consideration. It is also an undisputed fact that the proceedings came to be initiated by the Assistant Collector in the year 1994, i.e., after a period of almost 9 years. Under the circumstances, more particularly when the petitioners have already submitted an application for regularisation of the transaction on payment of necessary premium, penalty

etc., then the same is required to be considered by the respondent authorities. Considering the aforesaid observations made by this Court, the respondents are directed to consider the application submitted by the petitioners for regularisation of the transaction in accordance with law and on payment of premium. This exercise should be carried out by the respondents within a period of 3 months from the date of receipt of this order. While deciding the application the respondents are directed to consider the facts and circumstances and the observations made by this Court as stated hereinabove and until then the parties are directed to maintain status-quo. Accordingly, the impugned orders passed by the Assistant Collector, Porbandar, Collector, Junagadh and the judgment and order passed by the revisional authority dated 16.8.2003 in Revision Application No. 92/1999 are quashed and set aside by directing the respondents to consider the application submitted by the petitioners for regularisation of the transaction.

5. The petition is accordingly allowed. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

rmr. [M.R. Shah, J.]